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November 15, 2004

Jeff S Jordan  
Supervisory Attorney  
Complaints Examination &  
Legal Administration  
Federal Election Commission  
999 E Street, N.W.  
Washington, D C 20463

Re. MURs 5549 & 5559

Dear Mr Jordan:

This Response, including attachments, is submitted on behalf of Adams Outdoor Advertising, Inc , Adams Outdoor Advertising Limited Partnership and AOA Holding, LLC (collectively "AOA") and Stephen Adams ("Mr Adams") in response to complaints filed by Mark Brewer and Dennis Baylor in MURs 5549 and 5559, respectively. For the reasons set forth below, the Federal Election Commission should find that (1) there is no reason to believe that AOA violated any provision of the Federal Election Campaign Act ("FECA") or applicable Federal Election Commission ("FEC" or "the Commission") regulations, and (2) while there may be reason to believe that Mr Adams may have inadvertently committed a technical violation of 2 U S C § 441d(a)(3), the Commission should take no further action against him individually.

**Summary of Allegations**

It is difficult to discern from the vaguely-worded complaints in MURs 5549 and 5559 exactly who the complainants believe committed which violations of FECA. The

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two complaints appear to be based on the same two facts: (1) in early September, 2004, advertisements supporting the Bush-Cheney '04 campaign began to be posted on AOA billboards in Michigan and Pennsylvania, and (2) each billboard bore the disclaimer "Personal message paid for and sponsored by Stephen Adams " MUR 5549 Complaint at ¶¶ 1-2; MUR 5559 Complaint at ¶ 1 Based solely on their observations of these billboards, and without any additional evidence whatsoever, the complainants allege that both AOA and Mr. Adams committed serious violations of FECA.

The complaint in MUR 5559 is especially vague in its allegations. As far as can be determined, the complainant in MUR 5559 appears to allege that Mr. Adams, by paying for the billboards, made an excessive personal contribution to the Bush-Cheney '04 campaign in violation of 2 U.S.C. § 441a(a)(1)(A). MUR 5559 Complaint at ¶ 9. Alternatively, the complainant speculates that Mr. Adams and AOA engaged in some type of sham transaction that somehow resulted in AOA making a prohibited corporate in-kind contribution to the Bush-Cheney '04 campaign in violation of 2 U.S.C. § 441b(a). MUR 5559 Complaint at ¶ 10.

The complaint in MUR 5549 is only slightly more specific. The complaint appears to allege, without any substantiation, that Mr. Adams failed to pay AOA fair market value for the use of the billboards and that AOA therefore made a prohibited corporate in-kind contribution to the Bush-Cheney '04 campaign in violation of 2 U.S.C. § 441b(a). MUR 5549 Complaint at ¶ 4. The complaint then appears to allege, again without any substantiation, that Mr. Adams somehow violated 2 U.S.C. § 441b(a).



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because he "knowingly participated" in AOA's alleged corporate in-kind contribution to Bush-Cheney '04. *Id.* Finally, the complaint in MUR 5549 appears to allege that AOA or Mr. Adams – or possibly both – violated 2 U.S.C. § 441d(a)(3) because the disclaimer on each of the billboards is incomplete. MUR 5549 Complaint at ¶ 3.

**Statement of Facts and Discussion of Authority**

For the reasons set forth below, the allegations in the complaints in MURs 5549 and 5559 are, with one minor exception, completely without merit.

**Stephen Adams Did Not Violate 2 U.S.C. § 441a(a)(1)(A)**

Contrary to the allegation in paragraph 9 of the complaint in MUR 5559, Mr. Adams did not violate 2 U.S.C. § 441a(a)(1)(A) by making an excessive contribution to the Bush-Cheney '04 campaign. The dollar limits on personal contributions enumerated in 2 U.S.C. § 441a(a)(1)(A) do not apply to independent expenditures. The billboards that are the focus of the complaints in MURs 5549 and 5559 were paid for by Mr. Adams as part of a multi-state outdoor advertising campaign paid for in its entirety by Mr. Adams as an independent expenditure in support of the Bush-Cheney '04 campaign.

FECA defines an "independent expenditure" as an expenditure by a person that expressly advocates the election or defeat of a clearly identified candidate that was not made in concert or cooperation with or at the suggestion of the candidate, the candidate's authorized political committee, or its agents, or a political party committee or its agents. 2 U.S.C. § 431(17); 11 C.F.R. § 100.16(a). FECA further states that the term "clearly identified" means that the name of the candidate involved appears on the communication.



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2 U.S.C. § 431(18)(A); 11 C.F.R. § 100.17. Finally, FEC regulations define the term "expressly advocating" for purposes of 2 U.S.C. § 431(17) as any communication that uses a campaign slogan such as "Nixon's the One," "Carter '76," "Reagan/Bush" or "Mondale!" which, in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates. 11 C.F.R. § 100.22(a)

There can be no doubt that the billboards that are the subject of the complaints in MURs 5549 and 5559 expressly advocate the re-election of President George W. Bush and Vice President Dick Cheney. The outdoor advertising campaign paid for by Mr. Adams used a number of different advertisements. Each advertisement used a different catch phrase (e.g., "Defending Our Nation," "It's About Our National Security," "Boots or Flip-Flops?") that appeared in white type on a blue background immediately above the campaign slogan "BushCheney04" superimposed on the red and white stripes of the American flag. See billboard mockups attached as Attachment 1.

Moreover, both Stephen Adams and AOA went to great lengths to ensure that the outdoor advertising campaign in support of Bush-Cheney '04 met all the requirements of an independent expenditure under FECA. Mr. Adams hired AOA on or about June 1, 2004 to design and implement an outdoor advertising campaign as an independent expenditure in support of the re-election of President George W. Bush. Affidavit of Stephen Adams at ¶ 4 (attached as Attachment 2); Affidavit of Randall Romig at ¶ 3 (attached as Attachment 3).



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Recognizing that the advertising campaign requested by Mr. Adams required compliance with federal regulations, Randall Romig, the AOA employee who was principally responsible for the advertising campaign, sought legal advice from the outdoor advertising industry's trade association, the Outdoor Advertising Association of America, Inc. ("OAAA"). On or about June 4, 2004, Randall Romig contacted Nancy Fletcher, President of the OAAA, to seek guidance from her on the legal requirements applicable to an outdoor advertising company employed to design and implement an advertising campaign as an independent expenditure in support of a candidate for federal office. Affidavit of Randall Romig at ¶ 4. Ms. Fletcher forwarded Mr. Romig's request to Eric Rubin, a partner in the law firm of Rubin, Winston, Dierckx, Harris & Cooke, L.L.P. and general counsel to the OAAA. Affidavit of Randall Romig at ¶ 5. On or about June 10, 2004, Mr. Rubin sent a letter to Mr. Romig providing general guidance on the legal restrictions applicable to an outdoor advertising company hired to design and implement an advertising campaign as an independent expenditure in support of a candidate for federal office. Affidavit of Randall Romig at ¶ 6, Letter from Eric Rubin to Randall Romig (June 10, 2004) (attached as Attachment 4).

Mr. Rubin advised Mr. Romig that federal law required that Mr. Adams undertake this advertising campaign independent of, and without any coordination or communication of any type whatsoever with, any campaign organization or any person affiliated with such an entity. Mr. Rubin advised Mr. Romig that if Mr. Adams wanted to



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make an independent expenditure in support of the re-election of President George W. Bush, it had to be truly an individual and personal effort by Mr. Adams in complete isolation from any political organization and had to be paid for by Mr. Adams with his personal funds and without any offset or reimbursement by AOA. Affidavit of Randall Romig at ¶ 8, Letter from Mr. Rubin to Mr. Romig at 1. On or about June 19, 2004, Mr. Romig forwarded Mr. Rubin's letter to Mr. Adams with a cover memorandum stating that, according to Mr. Rubin, it was permissible for Mr. Adams to proceed with the advertising campaign in support of the re-election of President George W. Bush, provided that Mr. Adams paid for the advertisements directly and without any involvement by the Bush campaign. Affidavit of Randall Romig at ¶ 10, Memorandum from Randy Romig to Steve Adams (June 19, 2004)(see Attachment 4)

Mr. Adams received and read the memorandum from Mr. Romig and the letter from Mr. Rubin on or about June 21, 2004. Affidavit of Stephen Adams at ¶¶ 6-9. Throughout the advertising campaign that is the subject of the complaints in MURs 5549 and 5559, both Mr. Adams and Mr. Romig strictly followed Mr. Rubin's advice regarding the requirement that there could be no contact between Mr. Adams or AOA and the Bush campaign or any other political organization if the advertising campaign were to qualify as an independent expenditure by Mr. Adams. Affidavit of Stephen Adams at ¶ 10; Affidavit of Randall Romig at ¶ 14. Neither Mr. Adams nor Mr. Romig had any contact whatsoever with any federal candidate, candidate's authorized



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committee, or their agents, or any political party or its agents throughout the design and implementation of the advertising campaign that is the subject of the complaints in MURs 5549 and 5559 Affidavit of Stephen Adams at ¶ 11; Affidavit of Randall Romig at ¶ 15

Accordingly, because the billboards that are the subject of the complaints in MURS 5549 and 5559 were part of an independent expenditure by Mr. Adams in support of the Bush-Cheney '04 campaign there is no reason to believe that Mr. Adams made a excessive personal contribution to Bush-Cheney '04 in violation of 2 U.S.C. § 441a(a)(1)(A).

**Neither AOA Nor Stephen Adams Violated 2 U.S.C. § 441b(a)**

The complaints in MURs 5549 and 5559 both appear to allege, without any substantiation, that Stephen Adams and AOA engaged in something other than an arms-length transaction and that, therefore, AOA made a prohibited corporate in-kind contribution to the Bush-Cheney '04 campaign. These allegations are simply false.

FECA prohibits a corporation from making a contribution or expenditure in connection with any federal election. 2 U.S.C. § 441b(a). The term "contribution or expenditure" is defined to include "any direct or indirect payment, distribution, loan, advance, deposit or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization, in connection with any [federal] election . . . ." 2 U.S.C. § 441b(b)(2); 11 C.F.R. § 114.1(a)(1). FEC

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regulations describing the term "anything of value" state that if goods or services are provided at less than the usual and normal charge, the difference between the usual and normal charge and the amount actually charged would constitute an in-kind contribution from the vendor. 11 C.F.R. § 100.52(d)(1) Finally, FEC regulations define the term "usual and normal charge" for services as the "commercially reasonable rate prevailing at the time the services were rendered." 11 C.F.R. § 100.52(d)(2)

Mr. Adams and AOA went to great lengths to ensure that AOA did not inadvertently make an in-kind contribution to the Bush-Cheney '04 campaign. In his June 10, 2004 letter, Mr. Rubin advised Mr. Romig that federal election laws prohibited any contribution by a corporation to a federal election campaign. Mr. Rubin specifically advised Mr. Romig that all costs associated with respect to the advertising campaign had to be paid directly by Mr. Adams. Mr. Rubin's letter stated that this would include payment for all AOA services provided to Mr. Adams, including the direct costs for the design and posting of the proposed advertisements as well as the cost of administering the project. Mr. Rubin also advised Mr. Romig that AOA should charge Mr. Adams the same rates for AOA services that the company would normally charge any other advertiser for comparable services. Affidavit of Randall Romig at ¶ 7, Affidavit of Stephen Adams at ¶ 8; Letter from Eric Rubin to Randall Romig (June 10, 2004) (attached as Attachment 4).

Both Mr. Adams and Mr. Romig strictly followed Mr. Rubin's advice in this regard. AOA charged Mr. Adams the normal and usual charge for all of the services

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provided to Mr. Adams in connection with the advertising campaign that is the subject of the complaints in MURs 5549 and 5559. Mr. Adams, in an abundance of caution, actually paid AOA more than the direct costs of the advertising campaign in an effort to ensure that AOA did not make an in-kind contribution to the Bush-Cheney '04 campaign. Affidavit of Randall Romig at ¶ 16

When Mr. Adams retained AOA to design and implement a multi-state outdoor advertising campaign in support of the re-election of President George W. Bush, he gave the company a budget of one million dollars (\$1,000,000). Affidavit of Stephen Adams at ¶ 4, Affidavit of Randall Romig at ¶ 17. AOA employees under the supervision of Mr. Romig designed an advertising campaign that called for the placement of outdoor advertisements in Michigan, Pennsylvania, Wisconsin and South Carolina. Mr. Romig requested that AOA employees in these states provide him with the current market rates in each market. Affidavit of Randall Romig at ¶ 18. See also, e.g., Memorandum from Kevin Fitzsimmons and Steve Boyle to Randy Romig (July 13, 2004) (attached as Attachment 5)

It is standard practice in the outdoor advertising industry to charge advertisers separately for advertising space costs and production costs. Production costs are the costs of printing the advertisements that are then installed on billboards. Advertising space costs are the costs of renting the billboards for a defined period. The standard practice in the outdoor advertising industry is to build all indirect costs, such as creative design and



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administrative costs, into the standard rates that are charged for advertising space.

**Affidavit of Randall Romig at ¶ 19**

Based on the legal advice from Mr. Rubin, Mr. Romig designed an advertising campaign for Mr. Adams that purposefully came in approximately twenty thousand dollars (\$20,000) under budget. This "slippage" was built into the advertising campaign so that AOA would recover any unusual indirect costs that were not built into the advertising space costs and thereby ensure that Mr. Adams paid the entire cost of the advertising campaign. Mr. Romig believed, based on Mr. Rubin's advice, that this was a prudent way to ensure that AOA did not inadvertently make an in-kind contribution to the re-election campaign of President George W. Bush. Affidavit of Randall Romig at ¶ 20

Mr. Romig personally prepared the display contracts that AOA submitted to Mr. Adams. Based on the legal advice of Mr. Rubin, and using the current market rate information supplied by individual AOA offices, Mr. Romig charged Mr. Adams standard rate card rates for advertising space. The proposed contracts were sent to Mr. Adams between August 18, 2004 and August 24, 2004. Mr. Adams signed the contracts and returned them to Mr. Romig at AOA headquarters in Atlanta, Georgia during the last week of August, 2004. Affidavit of Randall Romig at ¶ 21; Affidavit of Stephen Adams at ¶ 12. See also, e.g., Poster and Bulletin Display Contracts between Adams Outdoor Advertising of Lehigh Valley and Stephen Adams (attached as Attachment 6).

The advertising campaign AOA designed and implemented for Mr. Adams began on September 7, 2004 and ended on November 2, 2004. The final cost of the advertising



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campaign was nine hundred seventy-seven thousand, four hundred and forty-eight dollars (\$977,448) A Proposal: Advertising Space to Benefit Re-Election of George W. Bush (July 23, 2004)(attached as Attachment 7) On September 7, 2004, Mr. Adams wired AOA one million dollars (\$1,000,000) to cover the cost of the entire advertising campaign that is the subject of the complaints in MURs 5549 and 5559. Wire transfer from Stephen Adams to Adams Outdoor Advertising Account \_\_\_\_\_ (September 7, 2004)(attached as Attachment 8) Mr. Adams instructed AOA to keep the twenty-two thousand, five hundred fifty-two dollar (\$22,552) difference between the actual cost and the initial budget "just to be on the safe side" and ensure that Mr. Adams paid all direct and indirect costs of the advertising campaign Affidavit of Randall Romig at ¶22, Affidavit of Stephen Adams at ¶ 13

Even a cursory review of the documentation of just one element of the multi-state outdoor advertising campaign designed and implemented by AOA for Mr. Adams demonstrates conclusively that Mr. Adams was charged the normal and usual rate for AOA's services On July 13, 2004, in response to a request from Mr. Romig, Kevin Fitzsimmons and Steve Boyle in the Bethlehem, Pennsylvania office of AOA provided Mr. Romig with quotes for an eight-week outdoor advertising campaign in the Lehigh Valley that would use a combination of bulletin boards and poster boards. Using the AOA of the Lehigh Valley rate card, Mr. Fitzsimmons and Mr. Boyle quoted Mr. Romig a price of one hundred eighteen thousand, eight hundred dollars (\$118,800) to run Mr. Adams' advertisements on 68 poster boards in the Lehigh Valley for an eight-week



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period. Mr. Fitzsummons and Mr. Boyle also quoted Mr. Romig a price of thirty-five thousand, four hundred dollars (\$35,400) to run Mr. Adams' advertisements on five specific bulletin boards in the Lehigh Valley for an eight-week period. Memorandum from Kevin Fitzsummons and Steve Boyle to Randy Romig (July 13, 2004)(attached as Attachment 5).

Mr. Romig incorporated these exact figures into his proposal summarizing the entire multi-state advertising campaign. A Proposal Advertising Space to Benefit Re-Election of George W. Bush (July 23, 2004)(attached as Attachment 7). During the last week of August, 2004, Mr. Adams signed two contracts with Adams Outdoor Advertising of the Lehigh Valley. The first contract required Mr. Adams to pay AOA of the Lehigh Valley one hundred eighteen thousand, eight hundred dollars (\$118,800) to run Mr. Adams' advertisements on 68 poster boards in the Lehigh Valley for an eight-week period beginning on September 7, 2004 and ending on November 2, 2004. The second contract required Mr. Adams to pay AOA of the Lehigh Valley thirty-five thousand, four hundred dollars (\$35,400) to run Mr. Adams' advertisements on five specific bulletin boards in the Lehigh Valley for an eight-week period beginning on September 7, 2004. Poster and Bulletin Display Contracts between Adams Outdoor Advertising of Lehigh Valley and Stephen Adams (attached as Attachment 6).

Contrary to the unsubstantiated allegations in the complaints in MURs 5549 and 5559, internal AOA documents demonstrate conclusively that AOA charged Mr. Adams the normal and usual charge for the services it provided to Mr. Adams in connection with



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the advertising campaign that is the subject of these matters. Moreover, Mr. Adams paid AOA more than twenty-two thousand dollars over and above the actual cost of the advertising campaign "just to be on the safe side" and ensure that AOA recovered all direct and indirect costs of the advertising campaign. Clearly, there is no reason to believe that AOA made an in-kind contribution to the Bush-Cheney '04 campaign in violation of 2 U.S.C. § 441b(a). Since AOA did not violate 2 U.S.C. § 441b(a), it goes without saying that Mr. Adams did not violate 2 U.S.C. § 441b(a) either.

**Stephen Adams Made a Good Faith Effort to Comply with 2 U.S.C. § 441d(a)(3) and, Upon Learning That the Disclaimers Were Deficient, Went to Extraordinary Lengths to Comply With FECA and All Applicable Regulations Before the November 2, 2004 General Election**

The only claim in MURs 5549 and 5559 with any merit is the allegation in MUR 5549 that the disclaimers used on the advertisements in support of the Bush-Cheney '04 campaign did not comply completely with the requirements of 2 U.S.C. § 441d(a)(3). FECA requires that whenever an individual makes an independent expenditure for the purpose of financing a communication expressly advocating the election or defeat of a clearly identified candidate, the communication must clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee. 2 U.S.C. § 441d(a)(3).

The disclaimer initially affixed to Mr. Adams' advertisements in support of the Bush-Cheney '04 campaign read "Personal message paid for and sponsored by Stephen



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**Adams " See billboard mockups attached as Attachment 1. While that disclaimer satisfies 2 U.S.C. §441d(a)(3)'s requirement that such communications disclose the name of the person who paid for the communication, it does not fully comply with the statute because it does not disclose that the communication was not authorized by any candidate or candidate's committee and it does not provide the reader with the information needed to contact the person who paid for the communication. Mr. Adams committed this technical violation of 2 U.S.C. § 441d(a)(3) because he and AOA relied on erroneous legal advice from the general counsel of the Outdoor Advertising Association of America, Inc.**

**When Mr. Adams hired AOA to design and implement his independent advertising campaign in support of Bush-Cheney '04, he expected that AOA would ensure that the advertising campaign was run in full compliance with all federal, state and local laws governing campaign advertisements and outdoor advertising facilities.**

**Affidavit of Stephen Adams at ¶ 5. AOA sought to do just that by seeking legal advice from Eric Rubin, a partner in the law firm of Rubin, Winston, Dierckx, Harris & Cooke, L.L.P., and general counsel to the Outdoor Advertising Association of America, Inc.**

**When Mr. Rubin initially advised Mr. Romig on the FEC regulations governing independent expenditures, he did not provide any advice regarding the need to include a disclaimer on the advertisements supporting the re-election of President George W. Bush.**  
**Affidavit of Randall Romig at ¶9.**



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On July 6, 2004, Mr. Romig called Mr. Rubin to ask him specifically whether the advertisements supporting the re-election of President George W. Bush needed to include a disclaimer and, if so, what language need to be included. Affidavit of Randall Romig at ¶ 11 Mr. Rubin advised Mr. Romig that the advertisements did need to include a disclaimer and he recommended the following language "Personal Message Paid For and Sponsored by Stephen Adams " Affidavit of Randall Romig at ¶ 12 Mr. Romig forwarded that language to the AOA employees responsible for producing the advertisements and instructed them to include that specific language on all of the advertisements Affidavit of Randall Romig at ¶ 13. See also Email from Randy Romig to Brian Haselton re disclaimer on Bush design (July 6, 2004)(attached as Attachment 9).

When Mr. Romig received the complaint in MUR 5549 he was stunned to read the allegation that the disclaimer violated 2 U.S.C. § 441d(a)(3), because the disclaimer language had been provided to him by Mr. Rubin, general counsel to the OAAA and a recognized expert in advertising law Affidavit of Randall Romig at ¶ 23. Shortly after receiving the complaint in MUR 5549, Mr. Romig contacted Mr. Adams' personal lawyer, Robert T. York, and together they sought experienced FEC counsel to represent both AOA and Mr. Adams in MUR 5549 Affidavit of Randall Romig at ¶ 24; Affidavit of Stephen Adams at ¶ 14

Upon being informed by new counsel that the disclaimer did not, in fact, fully comply with the requirements of 2 U.S.C. § 441d(a)(3), Mr. Adams immediately took



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steps to comply with FECA and all applicable FEC regulations prior to the November 2, 2004 general election. Mr. Adams immediately retained AOA to produce and install corrected disclaimers on all of the advertisements that had been posted in Michigan, Pennsylvania, Wisconsin and South Carolina as part of Mr. Adams' independent advertising campaign in support of the re-election of President George W. Bush. Prior to the election, AOA employees installed the following disclaimer on every single advertisement in all four states: "Paid for by Stephen Adams and not authorized by any candidate or candidate's committee. Contact: [sadams@adamsoffice.net](mailto:sadams@adamsoffice.net)." The total cost to Mr. Adams of installing corrected disclaimers on all of the advertisements prior to November 2, 2004, was fourteen thousand, five hundred and forty-five dollars and twenty-seven cents (\$14,545.27). Affidavit of Stephen Adams at ¶¶ 15-17; Affidavit of Randall Romig at ¶¶ 25-28. See also photographs of billboards bearing corrected disclaimers attached as Attachment 10.

While there is reason to believe that Mr. Adams initially failed to fully comply with 2 U.S.C. § 441d(a)(3), the Commission should take no further action against Mr. Adams for this technical violation. Mr. Adams made a good faith effort to comply with 2 U.S.C. § 441d(a)(3) by seeking the advice of counsel and then following that advice to the letter. Mr. Adams should not be penalized for following the advice of counsel who Mr. Adams knew to be a recognized expert on the law of advertising. Moreover, once Mr. Adams was advised that the disclaimer was technically insufficient, he went to extraordinary lengths at significant personal cost to rectify the violation and to ensure that





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every single advertisement included a disclaimer fully compliant with 2 U.S.C. § 441d(a)(3) before the November 2, 2004 general election. To penalize Mr. Adams in this situation would be fundamentally unjust.

**Conclusion**

For the reasons stated above, the Commission should find that (1) there is no reason to believe that Stephen Adams violated 2 U.S.C. § 441a(a)(1)(A) or applicable FEC regulations, (2) there is no reason to believe that either AOA or Stephen Adams violated 2 U.S.C. § 441b(a) or applicable FEC regulations, and (3) while there is reason to believe that Mr. Adams may have technically violated 2 U.S.C. § 441d(a)(3), the Commission should take no further action against him.

Respectfully submitted,

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**Counsel for Adams Outdoor Advertising,  
Inc., Adams Outdoor Advertising Limited  
Partnership, AOA Holdings, LLC and  
Stephen Adams**



## **ATTACHMENT 1**

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DEFENDING OUR NATION.

***BUSH***  
***CHENEY***



FOR MORE INFORMATION, VISIT US AT [WWW.BUSHCHENEY.COM](http://WWW.BUSHCHENEY.COM)

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IT'S ABOUT OUR NATIONAL SECURITY.

***BUSH***  
***CHENEY***



FOR A FULL LIST OF PARTICIPATING SYSTEMS VISIT US AT [bushcheneysystems.com](http://bushcheneysystems.com)

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A NATION SECURE.

**BUSH**  
**CHENEY**



FOR THE PEOPLE OF THE UNITED STATES

29044224471

ONE NATION UNDER GOD.

***BUSH***  
***CHENEY***



FOR MORE INFORMATION, VISIT US AT [bushcheneyp2004.com](http://bushcheneyp2004.com)

29044224472

BOOTS OR FLIP-FLOPS?

**BUSH**  
**CHENEY**



PLEASE RECYCLE PEPPER WITH OTHER PLASTIC BOTTLES

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ATTACHEMENT 2

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**ATTACHMENT 3**

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**ATTACHMENT 4**

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contributions to the candidate for the same election, as long as the overall \$5,000 limit is not exceeded.

## Contributions to Other Committees

In addition to contributing directly to candidate committees, an SSF may support other committees that contribute to candidates, such as party committees. An SSF contribution to another political committee may take any of the forms described in this section.

A contribution to a committee that supports more than one candidate is subject to a yearly contribution limit of \$5,000. The contribution does not count against the limit for a particular candidate unless the SSF:

- Gives to an unauthorized single-candidate committee (i.e., a political committee that supports only one candidate),
  - Knows that a substantial portion of its contribution will be given to or spent on behalf of a particular candidate, or
  - Retains control over the funds after making the contribution.
- 110 100, 110 200

## Supporting Nonfederal Candidates

SSFs may contribute to nonfederal candidates using money they have raised for federal elections. Donations to nonfederal candidates are subject to state and local laws, not the Federal Election Campaign Act, but the SSF must still disclose the disbursements in its FEC reports: AOs 1999-27 and 1991-18.

SSFs active in both federal and nonfederal elections should also consult Appendix A.

## What is an Independent Expenditure

An independent expenditure is an expenditure for a communication, such as a Web site, newspaper, TV or direct mail advertisement that:

- Expressly advocates the election or defeat of a clearly identified candidate; and
- Is not made in consultation or cooperation with, or at the request or suggestion of a candidate, candidate's committee, party committee or their agents. 100 23 and 100 1(a). See "What Constitutes Coordination" below.

## When is a Candidate "Clearly Identified"

A candidate is "clearly identified" if the candidate's name, nickname, photograph or drawing appears, or the identity of the candidate is otherwise apparent. Examples include "The President," "your Congressman," "the Democratic presidential nominee," "the Republican candidate for Senate in the State of Georgia." 100 17.

## What is "Express Advocacy (Candidate Advocacy)"

"Express advocacy (candidate advocacy)" means that the communication includes a message that unmistakably urges election or defeat of one or more clearly identified candidate(s).

There are two ways that a communication can be considered express advocacy (candidate advocacy) by use of certain "explicit words of advocacy of election or defeat" and by the "only reasonable interpretation" test. 100 22.

"Explicit words of advocacy of election or defeat"

The following words convey a message of express advocacy (candidate advocacy):

- "Vote for the President," "re-elect your Congressman," "support the Democratic nominee," "cast your ballot for the Republican challenger for the U.S. Senate in Georgia," "Smith for Congress," "Bill McKay in '98,"
- Words urging action with respect to candidates associated with a particular issue, e.g., "Vote Pro-Life"/"Vote Pro-Choice," when accompanied by names or photographs of candidates identified as either supporting or opposing the issue,
- "Defeat" accompanied by a photograph of the opposed candidate, or the opposed candidate's name, or "reject the incumbent", and

- Campaign slogan(s) or word(s), e.g., on posters, bumper stickers and advertisements, that in context can have no other reasonable meaning than to support or oppose a clearly identified candidate, for example, "Nixon's the One," "Carter '76," "Reagan/Bush." 100 22(a).

"Only Reasonable Interpretation" Test In the absence of such "explicit words of advocacy of election or defeat," express advocacy (candidate advocacy) is found in a communication that, when taken as a whole and with limited reference to external events, such as the proximity to the election, can only be interpreted by a "reasonable person" as advocating the election or defeat of one or more clearly identified candidate(s). 100 22(b)(1) and (2).<sup>3</sup>

This test requires advocacy of a candidate that is unmistakable, unambiguous and suggestive of only one meaning (that being the election or defeat of a candidate). 100 22(b)(2).

Note that the author's intent is irrelevant. The test is how a "reasonable" receiver of the communication objectively interprets the message. If reasonable minds could not differ as to the unambiguous electoral advocacy of the communication, it is express advocacy (candidate advocacy) regardless of what the author intended.

Multiple page communications or multiple inserts in the same envelope in a direct mail piece are to be read all together as a whole. MCF L, 479 U.S. at 249.

## What is Not an Independent Expenditure

When an expenditure is made under the circumstances described below, it results in an *in-kind* contribution to a candidate rather than an independent expenditure and therefore counts against the SSF's contribution limit for that candidate. 100 1(c).

4. Four federal courts have found invalid 11 CFR 100.52(b), the FEC regulation containing the "only reasonable interpretation" test. *Miano Right to Life Committee v. FEC* (1st Circuit Court of Appeals, 1999), *Right to Life of Buchanan County v. FEC* (NY district court, 1999), *FEC v. Christian Action Network* (4th Circuit Court of Appeals, 1999), and *the Virginia Society for Human Life, Inc. v. FEC* (VA district court, 2000). See also, *Issue Right to Life Comm., Inc. v. Williams* (8th Circuit Court of Appeals, 1999). The regulation (100.52(b)) was based on the 1997 8th Circuit Court of Appeals decision, *FEC v. Pugh*. The split in the circuits remains unresolved.

3. Referred to in previous Campaign Guides as "magic words."

**Solicitations on Behalf of a Candidate**  
An expenditure by an SSF for a communication that solicits the public for contributions on behalf of a candidate is an in-kind contribution if the SSF collects and forwards the money to the candidate's committee. See AO 1980-46. See also Appendix D, "Marked Contributions."

**Candidate-Prepared Material**  
Any expenditure to distribute or republish campaign material (print or broadcast) produced or prepared by a candidate's campaign is an in-kind contribution, not an independent expenditure. 108 1(d).

**Coordination with Candidate's Campaign**  
Any expenditure that is a coordinated general public political communication is an in-kind contribution, not an independent expenditure. See below 108 1(h)(4) and 100 23.

#### **Coordinated General Public Political Communication**

A communication is a Coordinated General Public Political Communication and is considered an in-kind contribution and not an independent expenditure if it:

- is intended for an audience of over 100 people and is made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a Web site;
- is coordinated with the candidate, party or their agents (see below);
- mentions a clearly identified Federal Candidate (see below); and
- is paid for by a person other than a candidate, a party or their agents.

**What Constitutes Coordination**  
Coordination with the candidate, the party or their agents occurs when the communication is created, produced or distributed:

- At the request or suggestion of the candidate or party;
- After the candidate or party has exercised control or decision-making authority over the details of the communication (see below); or
- After substantial discussion or negotiation, resulting in collaboration or agreement, between the communicator (e.g., the creator, producer, distributor or the person paying for the communication) and the candidate or party concerning the details of the communication (see below).

**Details of the Communication**  
Details of the communication include the content, timing, location, mode, intended audience, volume of distribution or the frequency of placement of that communication.

#### **Exception: Candidate's Response to Inquiry**

A candidate's or party's response to an inquiry regarding their position on legislation or policy does not alone constitute coordination.

#### **Internet Independent Expenditures**

Recent AOs have addressed cases involving independent expenditures over the Internet. In AO 1998-22, the Commission advised that a Web site containing express advocacy of a Federal candidate would be considered an independent expenditure only if the activity was completely independent of the campaign. If the activity was done in cooperation, concert or concert with a campaign, it would be an in-kind contribution and, thus, would be reportable by the campaign.

In AO 1998-37, a PAC generated express advocacy communications for electronic distribution through downloads and e-mail. Costs of registering and maintaining the Web site or of computer hardware and software did not count as independent expenditures unless they were directly attributed to specific express advocacy communications such as maintaining a separate Web site for or against specific candidates. On the other hand, the expenses of initially distributing an express advocacy communication through e-mail was considered an independent expenditure. The PAC was not required to collect information on those individuals who downloaded the PAC's advertisements and used them for their own political activity. See 108 1(c)(1).

#### **Disclaimer Notice Required**

A communication representing an independent expenditure must display a disclaimer notice. See Section 4 for more information.

#### **Allocation Among Candidates**

When an independent expenditure is made on behalf of more than one clearly identified candidate, the SSF must allocate the expenditure among the candidates in proportion to the benefit that each is expected to receive. For ex-

ample, in the case of a published or broadcast communication, the attribution should be determined by the proportion of space or time devoted to each candidate in comparison with the total space or time devoted to all the candidates. 104 10, 106 1(a).

#### **Contributing to Committees That Make Independent Expenditures**

A contribution by an SSF to a committee that makes independent expenditures is subject to the SSF's limit for that committee.

A contribution to a committee that supports only one candidate, however, is subject to the SSF's per candidate, per election limit. 110 1(h).

#### **Prohibitions Apply**

Note that the same persons prohibited from making contributions to candidates and political committees are also prohibited from making expenditures, including independent expenditures, in connection with federal elections. Thus, independent expenditures by corporations, labor organizations, federal government contractors and foreign nationals are prohibited.

### **3. Independent Expenditures by Qualified Nonprofit Corporations**

Although corporations and labor organizations are prohibited under the Act from making contributions or expenditures in connection with federal elections, a limited exception allows certain Qualified Nonprofit Corporations (QNCs) to make independent expenditures (but not contributions). If a QNC makes a reportable (see Filing Reports, page 23) independent expenditure, it must demonstrate its eligibility for QNC status. The following paragraphs explain these issues in greater detail.



## **ATTACHMENT 5**

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**ATTACHMENT 6**

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**ATTACHMENT 7**

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## **ATTACHEMENT 8**

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**ATTACHMENT 9**

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**ATTACHMENT 10**

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IT'S ABOUT OUR NATIONAL SECURITY.

**BUSH**

**CHENEY**



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Paid for by Stephen Adams and not authorized by any candidate  
or candidate's committee. Contact: sadams@adamsoffice.net

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